

# **Advocacy Guide to Rights Protection for Youths in the Juvenile Justice System**





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## Introduction

Equal justice under the law is a fundamental concept of American jurisprudence, but for youth with in the juvenile justice system, human rights protections are typically inadequate. Even when rights do exist in statute, regulations and case law, loopholes, vague language or lack of enforcement often weakens them.

Why does this occur? Unfortunately, fear, misunderstanding and stigma dominate the perception of juvenile crime in this country. Americans have long been ambivalent about the purpose of the juvenile justice system and many states are opting for a more punitive approach to addressing criminal behavior. This trend, coupled with increasingly overcrowded facilities and a lack of sufficient resources, has resulted in the frequent violation of the rights of juveniles.

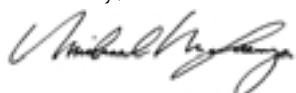
For youth who have mental illness, the culture of the criminal justice system is especially harmful. State and community leaders need to gain a better understanding of the needs and rights of incarcerated youth. This must include knowledge of the impact of a punitive, potentially abusive and neglectful environment on a young person's development. Children with mental health treatment needs should not be further harmed by the very facilities that have supposedly been designed to provide them rehabilitation and treatment. The numbers of youth with mental health treatment needs in the juvenile justice population are staggering. A study published in the December 2002 *Archives of General Psychiatry* indicates that nearly two-thirds of the 1172 boys and three-quarters of girls of the 657 girls in juvenile detention have at least one mental illness.

The U.S. Department of Justice conducted investigations in juvenile justice facilities in a number of states and counties in the 1990s. An investigation of secure correctional facilities in Louisiana, for example, identified serious systematic problems with staff abuse and juvenile-on-juvenile violence. Problems cited by the Justice Department in Georgia's juvenile justice facilities include the lack of appropriate mental health screening and treatment, the use of excessive force by staff, often in an attempt to control the manifestations of mental illness, and the extreme forms of corporal punishment in the boot camps, regardless of age or mental health status, resulting in serious injuries to youth.

As an advocate for children's rights, you can improve this situation, and the National Mental Health Association (NMHA) is pleased to provide you with this tool to support your efforts. This guidebook is designed to provide you with details concerning the juvenile justice population, how the corrections system operates and where America stands as a nation in maintaining the rights of these youths. In addition, information will address the types of rights that are or should be addressed in the juvenile justice system, followed by specific strategies for how advocates can answer the call to action.

If we can provide further technical assistance to support your efforts to protect the rights of youth with mental health treatment needs in the juvenile justice system, please contact the NMHA Resource Center for further information at (800) 969-6642. Thank you in advance for your advocacy on behalf of youth.

Sincerely,



Michael M. Faenza, MSSW  
President and CEO  
National Mental Health Association

## II. Building the Foundation

In order to be effective, youth and family advocates need to have a basic understanding of the population targeted, how the system operates and the current status of rights and protection. This section will provide essential background information to serve as a foundation for implementing advocacy efforts on behalf of children with mental health needs in the juvenile justice system.

### The Juvenile Justice Population

More than two million youth are arrested in the United States each year, and almost half of them are formally processed through the juvenile justice system. Those incarcerated are disproportionately male, African-American or other youth of color, and socio-economically disadvantaged. In fact, African American youth are incarcerated at five times the rate of their white counterparts and are less likely to have an attorney representing them in juvenile court proceedings. African Americans are also more likely to be incarcerated than white youth charged with the same offense and/or with a similar offense history.

Many youth in the juvenile justice system have histories of multiple out of home placements, physical and sexual abuse, neglect, parental drug or alcohol abuse, poor school performance, and truancy. The majority exhibits symptoms of significant emotional problems, including two-thirds of boys and three-quarters of girls with diagnosable mental disorders (Archives of General Psychiatry). Based on data obtained from site visits to a nationally representative sample of 95 public and private juvenile facilities, researchers found that 57 percent of youth reported they had previously received treatment for mental health problems (ABT Associates). Presumably, the care they received was insufficient to meet their needs.

The most common mental disorders identified in the juvenile justice population include attention deficit hyperactivity disorder (ADHD), conduct disorder, depression, anxiety disorders, and post-traumatic stress disorder (PTSD). Of note, many incarcerated youth have been diagnosed with more than one mental disorder, including co-morbid learning or developmental disabilities, and/or substance use or abuse. Behavioral symptoms common to youth with mental disorders may contribute to

their increased risk for juvenile justice system involvement. These include: developmentally inappropriate social skills, impulsivity or lack of impulse control, risk taking behaviors, hypersensitivity to criticism, susceptibility to negative peer pressure, and greater difficulty learning in school.

Many of youth with mental health treatment needs have been referred to the juvenile justice system because their local communities failed to provide appropriate services. In a recent NMHA survey of 11 states, it was determined that many of the youth in those juvenile justice systems had previously received mental health services, but they were not the right type or intensity.

Incarceration has a profound impact on many youth. Young people may enter the juvenile justice system without mental, emotional, or behavioral health problems; however, these problems may be triggered by a host of environmental stressors once they are there (CMHS, 2001).

### The Juvenile Justice System

The juvenile justice system varies from state to state, both in terms of content and quality of services and programs. According to the National Center for Juvenile Justice, "America does not have a juvenile justice system. Rather, it has 51 separate systems—each with its own history, its own balance of powers, its own maze of laws, policies, and practices. It is possible to make generalizations about them as a group, to pick out broad themes and basic assumptions they have in common, and to emphasize what makes them more or less the same; however, actually understanding them requires some inquiry into what makes them distinctive." (NCJJ) At a minimum, most state systems include:

- Law enforcement
- Juvenile detention (or other pretrial programs)
- Courts
- Corrections
- Community based programs for delinquents
- Programs designed for status offenders

The juvenile justice system is fragmented and categorical with each program element operating with varying degrees of communication, collaboration and autonomy from the rest. In fact, some times different elements of the system are managed by separate public agencies and funded out of

diverse sources of state and local revenue. Jurisdictional boundaries, legal roles and legislative mandates have confounded efforts to ensure continuity as a youth moves through the system

A flow chart of a typical process for an arrested youth is provided below.

There are a wide range of "solutions" for youth that judges can select with alternatives varying by state. A list of common judicial recommendations/actions is provided below:

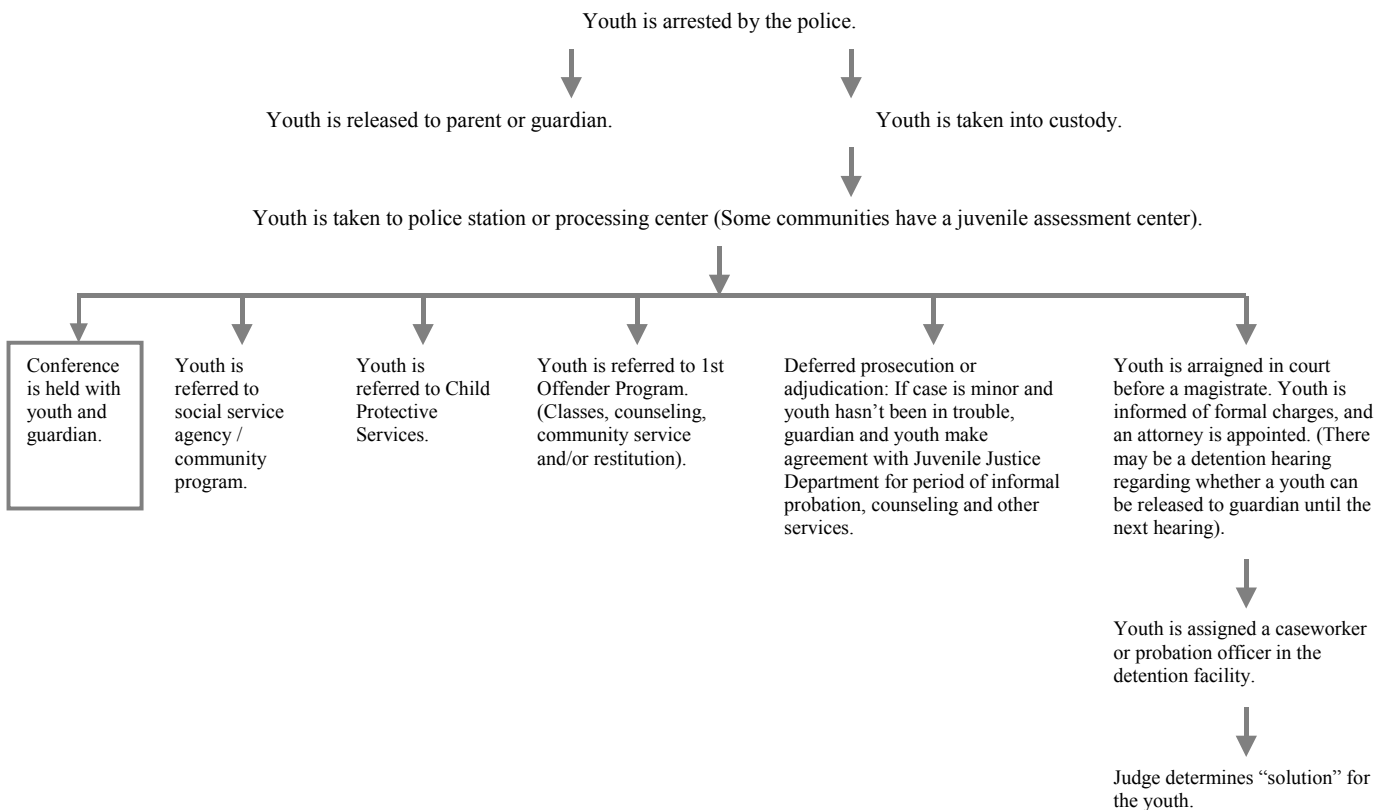
*Community Detention:* The youth continues to live at home and a probation officer visits regularly. Some programs work closely with the family and make service referrals; others just monitor the youth's whereabouts.

*Community Detention with Electronic Monitoring:* An electronic monitoring anklet is attached to the youth. This is most often for youth awaiting court appearances or placements with long waiting lists.

*Day or Evening Reporting Centers:* The youth lives at home and reports to the center every day. The quality and length of the programs vary. Some of the better centers offer education, recreational support, counseling, transportation, and life skills training.

*Evidenced-Based Services:* These can include family preservation, in-home interventions, the wraparound process and multi-systemic therapy. Such services are provided in the youth's home, school or community. *Fines, Community Service and Restitution:* This is often recommended for those who have committed minor or first-time offenses, as well as those on probation.

## A Flow Chart of a Typical Process for an Arrested Youth.



*Group and Foster Homes:* Youth live together in close supervision of adults. Specialized therapeutic foster homes are sometimes available for youth with mental illnesses.

*Youth Centers and Camps:* Residential programs designed to build interpersonal and vocational skills and sometimes teach a trade. This includes "Boot Camps," set up in military style to emphasize discipline and physical conditioning, rather than rehabilitation. Boot camps are not suitable for younger children or youth with mental illnesses, and research shows they do not reduce recidivism. In fact, most correctional experts agree that a confrontational model that employs tactics of intimidation and humiliation is counterproductive for most of these young people. The bullying and aggressive interactions that characterize these environments do not model the pro-social behavior and empathy that youth need to learn.

*State Facility:* Such confinements are most often used when youth have committed multiple or more serious offenses. The environments are strictly regulated, and the quality varies tremendously. Some offer counseling and other therapeutic services, but many do not. They are required to provide educational services (including special education), physical and mental health care, exercise or recreation, access to legal counsel, and contact with family members. There are various types of state confinements including secure detention and juvenile correctional facilities. A secure juvenile detention facility provides temporary custody and care of a child within a locked facility. The use of detention is intended to be for a short period of time while the child is awaiting the disposition of his or her case in juvenile court. Such a facility is usually operated by the local municipality. Because secure detention facilities are intended for short-term use, adequate mental health services are typically not provided.

When the court determines a longer period of incarceration is needed, children are placed in a juvenile correctional facility. Many youth are adjudicated to a juvenile correctional facility because of the serious nature of their crime and subsequent conviction. However, others are sent to correctional facilities because effective and safe community-based alternatives are not available. When

services are lacking, children with mental health treatment needs may spend more time confined to correctional facilities. These secure facilities, sometimes called "training schools" or "youth development centers," are typically under the control of the state juvenile justice authority or another state agency. Many states have contracted with private corporations to operate these facilities. In most states, youth are committed to correctional facilities for an indeterminate length of time. Eligibility for release is determined by the facility administrator based upon the recommendations of the staff. It is obviously crucial, therefore, that adequate mental health services be available to help determine a child's readiness to return to the community. Unfortunately, mental health services are typically not available in adequate quantity or quality. The result in many cases is that children with mental health treatment needs spend more time in confinement than do other children.

A discharge or transition plan should be developed with the youth's family before any young person leaves a juvenile facility. Unfortunately, few facilities develop these plans. The purpose of the plan is to link the young person and his or her family with appropriate aftercare services in their own community. If needed, this plan should also assure continued treatment. The discharge or aftercare plan should be started at the time of admission to the juvenile facility. When possible, the plan should address aftercare services within the community where the young person and family reside.

The services available in the community upon discharge from these programs and facilities vary tremendously. Some facilities have aftercare workers and programs, and some have strong ties to services in the community, but many do not.

### III. A Call to Action

Advocates need to know what potential problem areas need reform in order to develop action plans to address them. This portion of the guidebook will provide an introduction and basic information regarding the types of rights most frequently violated by systems responsible for youth. Descriptions of the kinds of protections that should be in place, as well as the gaps most commonly found in state juvenile justice systems, will be discussed.

## Know Your Rights

Being informed of your rights is of utmost importance, thus NMHA's position is that all youth at the time of detention must receive information about their rights in a format appropriate to their stage of development, age, language, literacy level, culture and disability. This information must also be provided to the youth's parent, primary caretaker and/or guardian.

In particular, most children in custody do not know that they have the right to have a parent or attorney be present during questioning by police. Thus, parents and advocates must be provided with this information in order to inform youth of their rights prior to being questioned by the authorities. If a young person is detained, a guardian -- who may also be the youth's attorney -- is often appointed to ensure the youth's rights are upheld throughout the course of the hearing process.

## Health and Mental Healthcare

Youth in correctional facilities have a greater than normal rate of emotional problems—including substance abuse and mental illnesses—yet the care they receive is often substandard (*Mental Health — United States 2000*, Chapter 18). These young people often have been diagnosed with a substantial number of pre-existing conditions due to lifestyle habits, past psychosocial history, and lack of prior adequate physical health and mental health care. Continuity of care is difficult for this population as well, as many youth have been in multiple out of home placements including foster care, residential treatment centers, inpatient psychiatric facilities and group homes.

Despite their need for treatment, these youth are underserved both in terms of physical health and mental health care. In fact, this population is likely to develop additional health-related problems associated with their arrest and new living environment.

Since 1984 when the federal government stopped reimbursing states through Medicaid for prison health services, Medicaid recipients lose their benefits while incarcerated in public facilities. Youth in private facilities, such as group homes and halfway houses, however, remain eligible for Medicaid, thereby ensuring that the federal and

local governments share in their health care costs (NCCHC, 2000). Youth in largely public facilities, such as detention centers and training schools, don't have this same assurance (CMHS, 2001). This discrepancy has resulted in a cost-shift for medical services from federal to local and state governments, often producing inequities and inadequacies in the quality of health care available to incarcerated youths.

On a positive note, the National Commission on Correctional Health Care (NCCHC), with support from major national organizations representing the fields of health, law and corrections, has developed standards for health services in correctional facilities. The goal of these standards is to improve the health of those incarcerated and increase the efficiency of health services delivery. These standards include some attention to mental health, and there is a separate volume for juvenile facilities.

## Understanding Mental Health And Substance Abuse Treatment

Mental health treatment that is structured, intensive and focused on changing specific behaviors has been found to reduce recidivism by as much as 50 percent (*Federal Probation*, 58-4, pp. 63-67, 1994). Examples of this approach include intensive training or behavior modification aimed at reducing risk factors for juvenile justice involvement, such as improving interpersonal skills, self-control, anger management and substance abuse resistance. Intensive, family-based treatment is associated with better outcomes, as are services provided by mental health professionals rather than corrections staff. Family-focused interventions have shown positive impacts on child and family functioning, delinquent behavior and recidivism.

For more information on best practices in treatment see NMHA's publication, *Best Practices in Mental Health Treatment for Youth in the Juvenile Justice System*.

## Key Health and Mental Health Issues for Advocates

The optimal continuum of mental health services available in juvenile correctional facilities should include:

**Screening:** Within 24 hours/days of incarceration, screenings conducted by a qualified mental health



professional. Services must include a past and present mental health and substance abuse history, and an assessment of suicide risk. Linkage and referral services must be provided when appropriate.

*Emergency Coverage:* All correctional facilities must have access to hospitals or other inpatient facilities to provide emergency medical and mental health care on a 24-hour basis. Trained staff must be available within the juvenile justice facility to help staff recognize potentially high-risk emergency situations and assess youth to determine their immediate treatment needs.

*Training:* In addition to emergency response, correctional staff must receive training on the health, mental health and developmental needs of youth as well as strategies for resolving difficult situations. This training should include information on the symptoms of mental health and substance abuse disorders, as well as the side effects of common mental health medications.

*Participation:* Youth should have the right to participate in and/or refuse treatment. In addition, parents, legal guardians and/or other designated family members must participate in treatment decisions and discharge planning.

*Mental Health Providers:* Youth have the right to receive services from trained providers including qualified mental health specialists.

*Discharge Planning:* A discharge or transition plan should be developed with the youth's family before the child leaves a juvenile justice facility. This plan should link the youth and family with appropriate community-based aftercare services and ensure continued treatment, as needed. Older youths will need special assistance making the transition to adult services.

## Education

The following policies are in place to protect the educational rights of youths with mental illnesses or other disabilities:

The Individuals with Disabilities Education Act (IDEA) mandates that states receiving federal support for education of students with disabilities must ensure that all eligible

receive a free and appropriate education. IDEA applies to juvenile correctional facilities, as well as schools and other educational programs. There must be a nondiscriminatory evaluation process to identify youth who are eligible, and parents must consent to the assessment and have the opportunity to contribute to the development of an individualized education plan (IEP).

However, many research studies have documented that despite these protections, juvenile facilities often fail to meet minimal state standards and provide youth with an education that is substantially inferior.

What should you be advocating for specifically to safeguard education rights? Unfortunately, there is a lack of widely adopted professional standards for correctional education programs. NMHA recommends the following as a starting point:

- Schooling should be available year-round, for a minimum of 4 hours per day, and instructors should be certified by the state where the facility is located.
- Schools should meet standards associated with public schools, including teacher to student ratios and space.
- Youth should receive credit for academic courses toward a high school diploma, and high school equivalency programs should be available but not forced.
- The curriculum should be culturally competent and linguistically relevant to meet the youth's needs.
- The curriculum should include vocational training opportunities. Several correctional programs have sought accreditation from professional associations and colleges, which is a promising avenue for improving these types of services.

## Safe and Decent Living Conditions

There are well-documented deficiencies in juvenile facilities, including unsanitary conditions, unreasonable restraints, excessive isolation, overcrowding, poor security, lack of emergency preparedness, and insufficient health, mental health, education, and suicide prevention programs.

According to the Annie E. Casey Foundation publication, *Pathways to Juvenile Detention Reform*, there has been a five-fold increase in the number of juveniles placed in facilities

between 1985 and 1995. This trend has led to serious overcrowding in an increasing number of facilities. Youth with mental illness are especially vulnerable in such environments, as overcrowding further strains an already overburdened system in the following ways:

- Youth admitted to juvenile justice facilities are often inadequately screened, assessed and evaluated for mental health problems.
- Facilities are ill equipped to recognize and address suicidal behavior.
- Many facilities are operating with unqualified or poorly trained correctional staff, inadequate educational programs, and a virtual absence of mental health services.

Youth have a right to protection from assault by other inmates, as well as a right to protection from excessive use of force by staff. However, officials are usually held liable only if they fail to take reasonable steps in light of a known risk or it can be proven they acted with malice.

To prevent victimization, smaller, younger, disabled and vulnerable youth have the right to be housed separately from youth who are bigger, older, stronger and more aggressive. Advocates should push for a classification system to ensure that appropriate protections are in place to prevent youth from being victimized by other inmates.

For juveniles housed in adult facilities the situation is often bleak. Studies indicate that these youth are five times more likely to be sexually assaulted, twice as likely to be beaten by staff, 50 percent more likely to be attacked by a person with a weapon and eight times as likely to commit suicide as children confined in juvenile facilities (Forst, Fagan, & Scott, 1999). Advocates need to be watchdogs and champions for youths' rights to safety at both adult and juvenile facilities.

### Appropriate Discipline

Most facilities have a disciplinary process for youth who violate the rules. Youth have a right to be informed of these rules and the process followed prior to "punishment."

NMHA recommends the following to safeguard rights:

- All facilities should have a written behavioral management policy based on incentives and rewards.
- Corporal punishment should be prohibited.

- The use of chemical sprays should be prohibited.
- Control techniques, such as restraints or seclusion, should be used only with prior approval from the facility administrator or chief medical officer.

*A few words about restraints:* Time in restraints should be limited to the time it takes a youth to regain control of his or her behavior. Soft (leather) restraints should be used, and special care should be taken to avoid using restraints with youth who are survivors of maltreatment, as this process may re-traumatize them.

*A few words about seclusion:* Facilities may use different terms for seclusion, such as room confinement, administrative segregation, isolation, lock down or room lock. These procedures should always be used as a last resort. If these techniques cannot be avoided, treatment plans should include ways to reduce their future use. When used, staff should monitor each youth in isolation every 15 minutes. In those very rare cases where a youth is held in seclusion for more than 24 hours, staff should provide daily exercise and recreation, education, showers and reading materials, and the youth must be examined by a physician or licensed psychologist.

### Grievance Processes

Most facilities have a grievance process in place; however, the quality of these processes varies significantly. Advocates should obtain copies of these policies and reports to identify where rights are being violated.

It is important to recognize that there are many barriers to filing grievances and lawsuits, including:

- A lawsuit cannot be filed until the facility's grievance procedure is exhausted.
- Families filing lawsuits must pay for court filing fees and other miscellaneous legal charges.
- It is nearly impossible to file a lawsuit for mental or emotional injury without a concomitant physical injury.
- Youth who are the subjects of complaints and/or lawsuits are often at risk of losing good-time credits.

When researching the quality of facilities grievance processes, NMHA recommends that advocates:

- Talk to youth and families with experience in the system.

- Review the processes, procedures, policies and paperwork required for filing complaints.
- Review reports about complaint resolution.

Ombudsman programs can be an effective mechanism to ensure that grievances are addressed sufficiently and appropriately. Please see below in the "Answering the Call" section for detailed information about how to advocate for establishing such a program.

### Family Involvement

Research studies confirm that maintaining family relationships while youth are incarcerated correlates with successful reunification to the home, school and community, and reduces recidivism rates. Families are essential partners in their child's treatment and rehabilitation and must be equal players in all decisions relating to assessments, programming, placements, transition services and aftercare. Family involvement ensures an increased probability of success and creates the opportunity for improved communication with juvenile justice staff regarding their child's history, culture and behaviors.

Families must be provided information about how the juvenile justice system operates, their child's rights and all other information pertinent to actively participating in their child's rehabilitation. Juvenile justice system employees must provide families the opportunity to share information and perspectives. The "rights" of parents to be equal partners in the decisions being made on behalf of their child are rarely codified.

To ensure family involvement, NMHA recommends the following rights:

Parents, guardians and/or caretakers must:

- Be informed of their own and their child's rights.
- Be informed of their child's rights to communicate with them.
- Be informed on a regular basis on their child's progress, including information about their child's health, mental health and education status.
- Be notified when their child receives medical care or procedures.
- Be informed immediately in the event of a suicide attempt or other medical emergency.

- Be involved in aftercare planning in conjunction with schools, corrections, social services and community services.

One way to increase the skills and competencies of professionals in the juvenile justice system on issues regarding family involvement is to provide training on building effective family partnerships and developing culturally competent services. Training must occur on an on-going basis to ensure juvenile justice staff are effectively addressing the treatment and psychosocial needs of youth, who have diverse values, beliefs and sexual orientations, in addition to backgrounds that vary by race, ethnicity, religion or language.

## IV. Answer the Call

### The Status of Rights and Protections

This section provides an introduction to the various sources of rights protection available in federal and state law as well as through voluntary mechanisms. This section will also provide strategies regarding how to leverage this information into effective advocacy.

#### Accreditation

Many facilities choose to become accredited by national organizations to show that they might meet minimum standards related to all aspects of their operation. There are two major accrediting bodies that have developed standards relevant to youth for juvenile justice facilities: The American Correctional Association and the National Commission on Correctional Health Care. The accreditation on standards address rights protection for youth in facilities.

#### Administrative Procedure Act

The federal Administrative Procedure Act (APA) and corresponding state administrative statutes spell out the processes that agencies -- including juvenile justice facilities -- must adhere to when making broad policy decisions, rulemaking and when applying those policies to individual circumstances, including adjudicating. Under rulemaking, there must be a process for public input and participation in the formulation of the rules. Alternatively, actions deemed as adjudications entitle the youth to some level of judicial

hearing. More than half of the states have followed the Model State Administrative Procedure Act when constructing these statutes, but there are significant differences from state to state in the depth and quality of the content.

### Juvenile Justice Delinquency Protection Act

During late 2002, Congress took final action on legislation to reauthorize the Juvenile Justice and Delinquency Protection Act of 1974 (JJDP), ending a six-year legislative battle. While the legislation does not contain everything mental health and child advocates wanted, there is no question that progress has been made. With some minor exceptions, this legislation maintains the core protections for youth.

The JJDP:

- Requires the development of model mental health care standards for juveniles;
- Establishes a program for developing, testing and demonstrating promising new initiatives and programs aimed at preventing and reducing juvenile delinquency; and
- Establishes research and evaluation, statistical analyses and information dissemination activities.

In terms of rights, the core protections included are:

- *Deinstitutionalization of status offenders*: Retains the current prohibition on detaining status offenders in secure facilities. Runaways may be held longer for family reunification purposes as specified in the Interstate Compact on Juveniles.
- *Separation of juveniles from adults in institutions ("sight and sound")*: Revises the mandate to reflect current regulations, which disallow contact between juvenile offenders in a secure custody status and incarcerated adults.
- *Removal of juveniles from jails and adult facilities*: Provides additional flexibility for rural areas by extending the period of time from 24 to 48 hours for which juveniles can be held in a jail or adult facility. "Sight and sound separation" continues to apply.
- *Disproportionate minority confinement*: Requires states to address prevention efforts and systemic efforts to reduce the disproportionate representation of

minorities that come into contact with the juvenile justice system.

One new requirements of note: Juveniles in the system for violation of a valid court order must be interviewed and assessed by a public child-serving agency within 48 hours of intake.

Formula grant funds under the JJDP continue to maintain critical focus areas such as hate crime prevention, programs that provide competent counsel, and programs that ensure family involvement and strengthening. New focus areas, include programs that:

- Provide mental health services;
- Provide follow-up post placement services;
- Provide counseling, mentoring and training; and
- Expand the use of probation officers to allow nonviolent offenders to remain in the community.

In addition, the Juvenile Accountability Block Grant provides funds for graduated sanctions and programs that include counseling, restitution, community services and supervised probation, as well as substance abuse programs and mental health screening and treatment.

### Civil Rights of Institutionalized Persons Act

The Civil Rights of Institutionalized Persons Act (CRIPA) passed in 1980 grants power to the U.S. Department of Justice (DOJ) to bring sanctions against states or local governments for violating the civil rights of persons in publicly operated facilities. It does not authorize actions on the part of individuals, but focuses instead on remedying systemic problems. The DOJ's Civil Rights Division Special Litigation Section is responsible for enforcement of CRIPA, and has investigated many juvenile facilities.

Advocates could easily leverage CRIPA and notify the DOJ Civil Rights Division of their concerns. As a result, the following process would be implemented:

1. DOJ investigates and decides whether a complaint is warranted,
2. A findings letter is issued by DOJ to the facility, and
3. The facility has 49 days to make reparations and take necessary corrective actions.

The vast majority of CRIPA actions result in negotiations and settlements without ever going to trial. Many have resulted in court-endorsed agreements called consent decrees that require state and local jurisdictions to take corrective actions. Once a court orders a consent decree, DOJ monitors the facility's compliance through onsite inspections by expert consultants, with reviews of periodic status reports. Advocates could become involved in this monitoring. If a facility fails to comply with the consent decree, DOJ will return to court to seek enforcement of the decree or other action.

Other sources of protection in federal law include:

*Section 504 of the Vocational Rehabilitation Act and Title II of the American's with Disabilities Education Act* prohibits discrimination against persons with disabilities by any program or activity that receives federal funds, including correctional facilities.

### **Monitoring Bodies**

There are a number of international human rights groups, such as Amnesty International and Human Rights Watch, which review and issue reports on rights violations in juvenile justice facilities. Federally mandated Protection and Advocacy organizations (P&As) are also a good resource for advocates. Federally funded and administered by states, P & A organizations are designed to provide legal assistance and other types of advocacy on behalf of persons with a wide range of disabilities.

The following section will provide information on strategies for implementing and safeguarding the rights of youth through building effective coalitions designed to address the issue.

### **Build A Coalition**

To address the complexities of the issues faced by youth with mental health treatment needs in the juvenile justice system, it is important to understand the crucial role communities play in reform. This can only be done through a process that incorporates the opinions, views and concerns of multiple stakeholders. In short, the more voices that speak out together, the more likely objectives will be achieved. Developing coalitions is a time consuming task, but if done correctly from the start, it can be a powerful

way to move a change process forward through the mutual development of a unified vision for reform. Coalitions also allow you to share the workload, acquire different perspectives on policy issues and establish greater credibility in the community.

Keep in mind that it may not always be necessary to form a new coalition. Before contemplating any new effort, investigate whether any coalitions relevant to juvenile justice currently exist.

Please see NMHA's resource guide on coalition building, *Coalition Building: The Foundation of Advocacy*, for additional information on these and related issues.

### **Develop an Action Plan**

Once you have a coalition in place, you need to assess the gaps and needs that are to be addressed in the mental health, education and juvenile justice systems, in the state and the local community. This assessment includes prioritizing issues; researching information and data regarding operational, political, policy, legal or regulatory areas that impact the issues; and building key relationships.

Some essential questions in making assessments are provided below.

- What mental health services are available in the community (including mental health assessment)
- What data about the juvenile justice, children's mental health and other relevant information are available?
- What are the funding streams used to purchase services for youth with mental health treatment needs in child-serving agencies?
- How often are youth referred to other placements and under what circumstances?

As the action plan is developed it is important to focus on one or two specific issues at a time, and begin with more modest ambitions. Trying to tackle too difficult or too many problems at once may dilute the coalition's impact, credibility and morale. For more in-depth information regarding how to rate your juvenile justice system, please see NMHA's *Checking Up on Juvenile Justice Facilities: A Handbook for Child Mental Health Advocates*.

## Diversion

NMHA supports maximum diversion for youth with mental health disorders at the earliest possible stage of their engagement with the juvenile justice system. Yet, inappropriate incarceration is a common occurrence. In fact, the vast majority of youth with mental illness involved in the juvenile justice system has committed low-level, non-violent offenses and are in need of treatment, not confinement and "rehabilitation." Unfortunately, due to lack of services and inadequate assessments, many of these youth experience very high rates of recidivism due to inadequate assessment, lack of services and insufficient discharge planning.

One of the solutions to preventing unnecessary confinement of youth with mental health treatment needs within the juvenile justice system is community advocacy focused on diversion. This is a complex issue because many communities do not assess the mental health treatment needs of youth considered at-risk with even fewer youth receiving treatment services until they are detained. To complicate matters further, many of the services youth need are either non-existent or non-accessible through the community-based mental health provider system. By waiting so late to provide essential mental health services and supports, communities inflict unnecessary stress on youth, families and their communities. Earlier identification, prevention and intervention for youth considered at risk allows for proactive resolution of problems before they exacerbate into more severe, intractable issues.

Three key elements are needed to divert youth contact with the juvenile justice system:

- Appropriate, thorough assessment and evaluation of the youth's needs,
- Educated law enforcement personnel, attorneys and judges who understand the problems and needs of youth with mental illness, and
- Adequate, accessible, available community based services and supports designed as alternatives to detainment and incarceration for youth with mental health and substance abuse needs.

Diversion can occur at the following stages in the juvenile court process:

1. Pre-booking: Before formal charges are brought, law enforcement officials can work with the family and community services to identify alternatives to detention or incarceration.
2. Post-booking: Attorneys, mental health providers and the courts evaluate the youth's eligibility for diversion based on a mental health evaluation and other factors.

Upon intake, screenings to determine appropriate placement for youth with mental health needs should be conducted by a qualified mental health professional or by staff who are trained and/or supervised by such professionals. At a minimum, screenings must address the following:

- Suicide risk and history
- Prior mental health problems
- Acute mental distress
- Abuse or use of alcohol or other drugs
- Special health conditions, including medication history
- Evidence and history of physical or emotional trauma or neglect
- History of perpetrating sexual offenses
- History of or need for special education
- Listing of historical involvement with mental health, health, education, child welfare, juvenile justice, social services and other community-based providers and organizations
- Names and dosage information of all medications previously or currently being prescribed

Youth who exhibit acute mental illness, suicidal ideation or appear to be in need of drug detoxification have the right to be immediately transferred to an appropriate medical or mental health facility.

## Take a Tour

To identify specific issues to include in your action plan, NMHA strongly recommends taking a tour of the facility or facilities you are interested in learning more about. Going through this process can draw attention to a whole range of problems that exist in a facility, as well as within the community. This information, combined with knowledge of community-based treatment alternatives, provides a solid foundation for a plan to hold the facility accountable,

achieve significant reforms, and demand diversion where feasible. For more information about how to organize a tour, please see NMHA's publication, *Checking Up on Juvenile Justice Facilities: A Best Practices Guide*.

Here is a list of pertinent questions to consider during a tour:

- What is the staffing ratio?
- What is the current census-is the facility overcrowded?
- How many hours of service do mental health professionals provide?
- How many and what types of complaints are filed by youths and families?
- How many and what types of lawsuits are filed by youths and families?
- How many youths have mental health or substance abuse diagnoses?
- How many youths are taking psychotropic medications?
- What is the number of emergency admissions for those with mental illness?
- What are the training requirements for staff?
- Are eating and sleeping areas sanitary and safe?
- How many reports of staff-on-youth and youth-on-youth violence are received each month? Suicide attempts?
- Are there written incident reports?
- Do youths placed in isolation receive education and regular exercise?
- Do youths have the right to refuse treatment without any consequences?
- Are copies of rights documents and procedures available?

### Negotiate with Juvenile Justice Officials

NMHA strongly encourages advocates to try a collaborative solution before resorting to more aggressive advocacy tactics. While violations of rights and the plight of youth can be very disturbing, it is important to remember that most of these problems result from insufficient community-based service alternatives, categorical and fragmented funding, and lack of information and training, rather than bad intentions. In fact, officials and staff at juvenile justice facilities can be your most important partners in achieving the reforms you seek.

Early in the advocacy process, include juvenile justice administrators, parole and probation officers, judges, and public defenders. Thoroughly explain the coalition's objective of serving the best interests of youth and the community at large. Instead of placing blame, emphasize the coalition's desire to address issues that are common areas of concern. Stress the positive impact collaboration, advocacy, education and lobbying has on policy reform and system change. If system professionals are not receptive to participation with the coalition, other actions may be considered, including media campaigns or the filing of lawsuits.

### Provide Training

Advocates can make a big impact on the juvenile justice system by providing training to law enforcement personnel, attorneys, judges, community leaders and juvenile justice staff. This training may address mental illnesses, deferment, suicide prevention, family involvement and cultural issues.

### Get Involved in Statutes, Rulemaking and Adjudication

The Administrative Procedure Act and state statutes play a significant role in reform of juvenile detention and correctional facilities.

Determine whether statutes provide more procedural protection or hearings. It will be very important to consult appropriate legal counsel throughout these efforts. Once again, your P&A may be a very helpful resource throughout this process.

### Take Advantage of JJDP

The new Juvenile Justice Delinquency Prevention Act provides some language around some specific rights, including physical safety, case management and assessment. It also encourages the provision of more mental health, aftercare and other services through grant funding. The JJDP can be an excellent tool for protecting rights and building needed programs.

### Take Advantage of CRIPA

Advocates could and should be alerting the DOJ about problems with juvenile facilities that violate the federal CRIPA law. Simply bringing this information to the

attention of DOJ's Civil Rights Division's Special Litigation Section can have a tremendous impact in systemic reform. Advocates can also be very influential by participating as monitors of consent decrees resulting from problems under CRIPA.

The most effective means of filing a complaint is to write a letter to the Section explaining the situation about which you are complaining, with as much detail as possible. If you are aware of similar incidents involving others, please include that information as well. Include information on how to contact you if they need further information (such as an address and telephone number). Address all complaints to:

Special Litigation Section  
P.O. Box 66400  
Washington, D.C. 20035-6400

The Section can also be reached by telephone (202-514-6255) or fax (202-514-0212 or 202-514-6273). You can also visit <http://www.usdoj.gov/crt/split/complaints.htm>.

### Take Advantage of Education Protections

Individuals with Disabilities Education Act (IDEA) statute can strengthen efforts to ensure a quality education for youth with mental illnesses in the juvenile justice system. Advocates have used IDEA to litigate on behalf of incarcerated youth in a number of states. In fact since 1975, more than 20 class action suits have been filed against juvenile corrections facilities. With few exceptions, the cases were settled, and very few published judicial opinions exist as a result. Many have been resolved through consent decrees that respond to the claims made by the plaintiffs. Keep in mind that the length of time between the initial complaint and the settlement ranges from approximately two to seven years.

Section 504 of the Vocational Rehabilitation Act and Title II of the American's With Disabilities Education Act. Also prohibit discrimination against persons with disabilities by any program or activity that receives federal funds-including correctional facilities. These may be useful advocacy tools as well.

### Litigate

Litigation has been an effective tool for reforming the juvenile justice system in many instances, but it is very expensive. In addition, it can be a wait of years before decisions are rendered, and it can damage agency and political relationships irreparably. Where feasible, less confrontational and costly alternatives should be explored.

Due to the fact that they have the authority to investigate rights violations, access records, and pursue other reforms on behalf of youths with disabilities, Protection and Advocacy systems may be a good resource for such efforts.

To learn more about "P&As," contact [www.NAPAS.org](http://www.NAPAS.org) or the American Bar Association's Juvenile Justice Center.

### Lobby

Once lobbying priorities have been identified, it is time for action. Here are recommended steps:

- Meet with the head of your juvenile justice, mental health, child welfare or other relevant agency that makes budget recommendations to the legislature or governor. Tell them what the coalition wants to fund, why it is important and how much it will cost.
- Identify key players and begin "visits" in home districts and the state capital. Keep in mind that this may include legislative staff.
- Identify the legislative committees that have jurisdiction over the issue (most likely Finance, Health and Welfare, and Appropriations Committees). Have coalition members visit chairs, and consider letter and telephone campaigns to committee members to educate them about youth, juvenile justice, and mental health issues, as well as your requests.
- Monitor success, and adjust your strategy as necessary. This may include shifting your focus to certain key players, or expanding your coalition to additional congressional districts.
- Consider other strategies, such as alerts to legislative networks, letters to the editor, outreach to the media, testimony at legislative hearings, and possibly holding a legislative breakfast or rally day.



See NMHA's *Advocacy Primer: Influencing Your State Legislature* for more detailed information on these and other advocacy strategies, including sample legislative testimony, letters to decision makers, and legislative alerts, as well tips for holding legislative rallies and other resources.

### Utilize the Media

The first step in any successful media campaign is determining when this approach would be the most helpful. Angering potential allies prior to negotiating reforms directly with decision makers is not advised. However, if such collaboration is not feasible or productive, the media can be a very effective catalyst for change. Here are some tips:

- Learn your local media outlets. Identify appropriate newspapers, and television and radio programs, to find out what types of stories they cover.
- Pitching over the telephone is often the most convincing approach. Be convincing, brief, and to the point. Tell them why the story is important to their audience, and use simple but clear facts to establish credibility. Offer to send more information by fax, and heed all deadlines.
- Remember that reporters want to tell real stories of the people who are affected, so be prepared with spokespeople, as well as back-up information. It is also important to provide press releases, media advisories about events they may want to cover, fact sheets, letters to the editor, opinion articles, and B-roll footage (less than 5 minutes in length), as applicable and feasible.

## V. Additional Resources

### NMHA Products

The National Mental Health Association has the following products available for advocates needing more detailed assistance:

- Advocacy Primer: Influencing Your State Legislature
- Coalition Building: The Foundation of Advocacy
- Mental Health Ombudsman Programs: Working to Improve Mental Health Delivery Systems for Consumers
- Report on Privatization and Managed Care in the Juvenile Justice System

- When Your Child is Behind Bars-A Family Guide to Surviving the Juvenile Justice System
- Checking Up on Juvenile Justice Facilities: A Best Practices Guide
- Checking Up on Juvenile Justice Facilities: A Handbook for Child Mental Health Advocates
- Community Perspectives on the Mental Health and Substance Abuse Treatment Needs of Youth Involved in the Juvenile Justice System: Commentary and Call to Action

### Fact Sheets:

- Treatment Works For Youth In The Juvenile Justice System
- Youth with Co-occurring Mental Health and Substance Abuse Disorders in the Juvenile Justice System
- Juvenile Boot Camps
- Children With Emotional Disorders In The Juvenile Justice System
- Mental Health And Youth Of Color In The Juvenile Justice System
- Mental Health And Adolescent Girls In The Justice System
- Prevalence Of Mental Disorders Among Children In The Juvenile Justice System

To obtain this information, contact the National Mental Health Association's Advocacy Resource Center at 800-969-NMHA (6642), or [shrinfo@nmha.org](mailto:shrinfo@nmha.org), or visit our Web site at [www.nmha.org](http://www.nmha.org).

### Other Organizations

**American Bar Association: Juvenile Justice Center,**  
[www.abanet.org/crimjust/juvjus/home.html](http://www.abanet.org/crimjust/juvjus/home.html)  
 ABA Juvenile Justice Center  
 740 15th Street, NW, 10th Floor  
 Washington, DC 20005  
 202-662-1506  
 Fax 202-662-1501

**American Correctional Association,**  
[www.aca.org](http://www.aca.org)  
 Membership Department  
 4380 Forbes Blvd  
 Lanham, MD, 20706  
 Fax: 301-918-0557

**American Correctional Health Services Association,**  
www.corrections.com/achsa  
250 Gatsby Place  
Alpharetta, GA 30022-6161  
Toll Free 1-877-918-1842  
Fax 770-650-5789  
achsa@mindspring.com

**Correctional Education Association,**  
www.sunsite.unc.edu/icea  
4380 Forbes Blvd.  
Lanham, MD 20706  
301-918-1915  
Fax 301-918-1846  
Membership Services: 1-800-783-1232

**Mental Health in Corrections Consortium,**  
www.mhcca.org  
2885 W. Battlefield  
Springfield, MO 65807  
417-823-3477  
Fax 417-823-3441  
bmoyer@forestinstitute.org

**National Center for Juvenile Justice,**  
www.ncjj.org  
710 Fifth Avenue  
Suite 3000  
Pittsburgh, PA 15219  
412-227-6950  
Fax 412-227-6955

**National Center for Mental Health and Juvenile Justice,**  
www.ncmhjj.com  
Policy Research Associates  
345 Delaware Avenue  
Delmar, New York 12054  
1-866-9NCMHJJ (toll free)  
Fax 518-439-7612  
ncmhjj@prainc.com

**National Center on Education,  
Disability, and Juvenile Justice,**  
www.edjj.org  
University of Maryland  
1224 Benjamin Building  
College Park, MD 20742  
301-405-6462  
Fax 301-314-5757  
edjj@umail.umd.edu

**National Center on Institutions and Alternatives,**  
www.ncianet.org/ncia  
The Augustus Institute  
Public Policy Center  
3125 Mt. Vernon Avenue  
Alexandria, Virginia 22305  
703-684-0373  
Fax 703-684-6037

**National Commission on Correctional Health Care,**  
www.ncchc.org  
1300 W. Belmont Ave.  
Chicago, IL 60657  
773-880-1460  
Fax 773-880-2424  
ncchc@ncchc.org

**National Council on Crime and Delinquency,**  
www.nccd-crc.org  
1970 Broadway, Suite 500  
Oakland, CA 94612  
510-208-0500  
Fax 510-208-0511

**National Criminal Justice Association,**  
www.ncja.org  
720 7th Street, NW, 3rd Floor  
Washington, D.C. 20001-3716  
202-628-8550;  
Fax 202-628-0080  
info@ncja.org

**National Juvenile Detention Association,**  
www.njda.com  
Eastern Kentucky University  
301 Perkins Building - 521 Lancaster Avenue  
Richmond, KY 40475-3102  
859-622-6259  
Fax 859-622-2333

**National Prison Project, American Civil Liberties Union,**  
www.aclu.org/Prisons/PrisonsMain.cfm  
733 15th Street, NW, Suite 620  
Washington, DC 20005  
202-393-4930  
Fax 202-393-4931

**Pacer Center,**  
www.pacer.org  
8161 Normandale Blvd.  
Minneapolis, Minnesota 55437  
952-838-9000  
TTY: 952-838-0190  
Toll-free in Greater Minnesota: 800-537-2237  
Fax 952-838-0199  
pacer@pacer.org

*Unique Challenges, Hopeful Responses: A Handbook for Professionals Working with Youth with Disabilities in the Juvenile Justice System,* Pacer Center.

*What Parents Need to Know About Children with Disabilities and the Delinquency System,* Pacer Center.

**National Association of Protection  
and Advocacy Systems, Inc.,**  
www.protectionandadvocacy.com  
900 Second Street, NE, Suite 211  
Washington, D.C. 20002  
202-408-9514  
Fax 202-408-9520  
info@napas.org

## Recommended Reading:

*A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings,* American Bar Association.

*Beyond the Walls: Improving Conditions of Confinement for Youth in Custody,* American Bar Association.

Burrell, S. & Warboys, L. (July 2000). *Special Education and the Juvenile Justice System,* National Center on Education, Disability and Juvenile Justice.

Drakeford, W. and Garfinkel, L (2000). *Differential Treatment of African American Youth in Reclaiming Youth.*

*Effects of Disabilities in the Justice System,* Pacer Center.

Leone, P.E. & Meisel, S. M. (1997). *Improving Education Services for Students in Detention and Confinement Facilities,* National Center on Education, Disability and Juvenile Justice.

Meisel, S. M., Henderson, K., Cohen, M. & Leone, P. E. (1998). *Collaborate to Educate: Special Education in Juvenile Correctional Facilities,* National Juvenile Detention Association.



2001 N. Beauregard Street, 12th Floor  
Alexandria, VA 22311  
800-969-NMHA (6642)  
TTY: 800-433-5959  
[www.nmha.org](http://www.nmha.org)